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No. 03-1408

Supreme Court, U.S.
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In The

Supreme Court Of The United States

NANCY BURTON,

Petitioner,

v.

HONORABLE A. WILLIAM MOTTOLESE,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF CONNECTICUT

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the Connecticut Supreme Court properly concluded that the Connecticut Superior Court did not violate the Petitioner's right to procedural due process when it exercised its inherent authority to initiate attorney disciplinary proceedings on its own motion and, following notice and a six-day adjudicatory proceeding, disbarred the Petitioner from the practice of law in Connecticut?

2. Whether the Connecticut Supreme Court properly affirmed the Connecticut Superior Court's disbarment of the Petitioner, having found no basis for concluding that the Superior Court abused its discretion or that the proceedings were unfair?

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COUNTER-STATEMENT OF THE CASE

This petition arises from a decision of the Connecticut Supreme Court, *Burton v. Mottolese*, 267 Conn. 1, 835 A.2d 998 (2003)(*en banc*), affirming the decision of Connecticut Superior Court Judge A. William Mottose to disbar the Petitioner, Attorney Nancy Burton, from the practice of law in Connecticut. *Sullivan v. Monroe*, No. CV 000370545, 2001 Conn. Super. Lexis 3141 (Conn. Superior Ct., Nov. 2, 2001).

Ms. Burton has a long history of attacking the integrity and impartiality of the Connecticut judiciary, ignoring established rules of civil procedure, flouting court orders, and engaging in other egregious acts of professional misconduct for which she has been reprimanded and sanctioned by the Connecticut state and federal courts at least ten times. *See Burton*, 267 Conn. at 56 n. 51; Petitioner's Appendix, hereinafter "Pet. App.," at 62a n. 51.

In the present case, after Ms. Burton brought suit without the authorization of the named plaintiffs, misrepresented facts to the court, ignored conflicts of interest, leveled unwarranted and disrespectful attacks upon the court, and otherwise performed at a level below the acceptable level of competence for an attorney, the presiding judge, the Honorable A. William Mottolese, conducted an investigation, notified Ms. Burton of the charges, held a six-day disciplinary hearing, and ordered Ms. Burton disbarred.

The Connecticut Supreme Court, sitting en banc, meticulously reviewed the record below and unanimously affirmed the trial court's order. In so doing, the Court expressly rejected almost all of the arguments that Ms. Burton makes in this petition, including the argument that the trial court's proceedings violated due process. Because Ms. Burton's "Statement of the Case" to this Court is riddled with misstatements, omissions and "facts" for which there is no support in the record, the respondent, the Honorable A. William Mottolese, submits this counterstatement of the facts pursuant to Rule 15.2 of the Supreme Court Rules in order to clarify the events that led to the trial court's order of disbarment.

A. The Facts Based On The Record

The trial court's inquiry into Ms. Burton's professional misconduct arose during Ms. Burton's purported representation of twenty-two plaintiffs in *Sullivan v. Monroe*, No. CV 000370545 (Conn. Superior Ct., Judicial District of Fairfield at Bridgeport, Connecticut), over which the respondent, the Honorable A. William Mottolese was presiding.

Ms. Burton was hired in 1999 by Lenore and Joseph Sullivan to appeal a decision of a local zoning board to allow the use of a rock crusher during construction of a new subdivision. At a neighborhood meeting on December 22, 1999, the Sullivans invited those in attendance to listen to a presentation by Ms. Burton and put their names on a sign-up sheet if they wanted to become co-plaintiffs with the Sullivans in the appeal. (Pet. App. at 2a-3a).

Approximately one week later, without meeting with the plaintiffs individually to discuss their objectives and potential conflicts of interest, entering into written agreements concerning the scope of the representation and the potential costs of the litigation, or adequately explaining to the individuals that they were going to be plaintiffs in a lawsuit, Ms. Burton filed not only the zoning appeal, but also a declaratory judgment action listing the Sullivans and the twenty individuals who had "signed-up" as the plaintiffs. (Pet. App. at 3a, 42a-47a).

On July 18, 2000, after the trial court had dismissed two counts of the declaratory judgment action, Lenore and Joseph Sullivan notified Ms. Burton in forceful and unambiguous terms, by telephone, letter, fax and e-mail, that they did not want to appeal or move to reargue the court's decision and did not want Ms. Burton to file any further pleadings in the case. (Pet. App. at 3a-4a). The Sullivans also sent a copy of their letter to the court. Notwithstanding the Sullivan's emphatic language, Ms. Burton defied her clients express instructions by filing a motion to reargue on July 20, 2000. (Pet. App. at 4a).

Ms. Burton's conduct angered not only the Sullivans, but also opposing counsel. In response to defense counsel's multiple motions for sanctions, the court scheduled a hearing for September 28, 2000. (Pet. App. at 4a-5a). At the hearing, which Ms. Burton failed to attend, it was brought to the court's attention that at least one plaintiff, Katherine Finch, had not authorized Ms. Burton to use her name in the lawsuit as a plaintiff and had hired

counsel to withdraw her from the litigation. (Pet. App. at 5a). Although Ms. Burton claims that the trial court conducted proceedings ex parte, in fact, the trial court rescheduled the hearing for October 31, 2000, and issued a written order instructing the parties that it would consider, among other matters, all motions for sanctions, including allegations involving Katherine Finch, and the Sullivan's complaint to the court concerning Ms. Burton's conduct. (Pet. App. at 5a-6a).

The October 31st hearing did not address these matters, however, because Ms. Burton opened the hearing by moving to disqualify Judge Mottolese from the case and accused him of gender bias. (Pet. App. 6a). After hearing argument, the court denied the motion to disqualify and ordered a further hearing to address the defendants' motions for sanctions against Ms. Burton. In an order dated November 9, 2000, the trial court notified the parties that "if necessary, the court will adjudicate the status of each plaintiff to ascertain if they are properly plaintiffs in the case on December 12, 2000." (Pet. App. at 6a).

When the parties reconvened on November 29, 2000, the court noted that although the defendants had moved for summary judgment, a number of the plaintiffs had withdrawn from the case and the lead plaintiffs, the Sullivans, had stated their desire to end the litigation. Accordingly, the court asked Ms. Burton to canvass the plaintiffs to determine whether they wanted to oppose the motion for summary judgment. In addition, the court identified two issues that it felt that it had an obligation to

address: (1) "whether Ms. Burton continued to participate in the litigation by filing pleadings and taking action without the consent of her clients;" and (2) whether Ms. Burton's allegations of gender bias against the court, which she had renewed in a second motion to disqualify and which, in the court's view, seriously undermined public confidence in the institution of the court, should be the subject of disciplinary action against Ms. Burton. (Pet. App. at 7a).

On December 12, 2000, after learning that Ms. Burton had failed to canvas the plaintiffs, the court began hearing the testimony of nine plaintiffs who were questioned under oath by the court and cross-examined by Ms. Burton concerning their understanding of the lawsuit and whether they wanted to continue to participate in it. Almost all of the plaintiffs who testified indicated that they did not understand that they had authorized Ms. Burton to bring an action in their names. (Pet. App. at 8a).

At the end of the plaintiffs' testimony, on December 22, 2000, the trial court announced that Ms. Burton's conduct had been "seriously called into question by the evidence" in three major areas: (1) her "authority, or lack of authority to represent the numerous plaintiffs other than the two Sullivans;" (2) her "continued activity in the case after being directed by the Sullivans to take no further action;" and (3) "the issue of [her] apparent divided loyalty between [her] duty to [her] client and [her] own self-protection or aggrandizement." (Pet. App. at 11a-12a). After explaining these charges and informing Ms. Burton

that she was free to testify on her own behalf either with or without counsel, the court scheduled a disciplinary hearing that began on January 4, 2001, and continued for six days. (Pet. App. at 12a).

At the end of the hearing, the trial court outlined the specific Rules of Professional Conduct that it felt were implicated by Ms. Burton's conduct, invited the parties to file briefs, and ultimately issued a detailed 34-page decision on July 17, 2001. It its decision, the court concluded that Ms. Burton had violated Rules 1.1, 1.2(a), 1.2(c), 1.4, 1.5(b), 1.7(b)(2), 1.8(f), 1.16(a)(3), 3.3(a)(1), 3.5(3), 8.2, 8.4(3) and 8.4(4) of the Rules of Professional Conduct by (1) purporting to represent clients without their consent; (2) ignoring conflicts of interest; (3) making misrepresentations to the court; (4) leveling unwarranted and disrespectful attacks upon the court; and (5) engaging in conduct that fell below the acceptable standard of competence for an attorney. (Pet. App. at 12a). *Sullivan v. Monroe*, 2001 Conn. Super. Lexis 2000 (Conn. Superior Ct., July 17, 2001).

On August 14, 2001, the court held a separate hearing on the issue of sanctions and weighed the aggravating and mitigating circumstances as required by the ABA Standards for Imposing Lawyer Sanctions, including the fact that Ms. Burton had a history of misconduct. Concluding that "[t]he evidence . . . reveals a patter of pervasive misconduct in so many facets of the practice of law that Attorney Burton's very fitness to practice law has been called into question," the court issued

a ruling on November 2, 2001, in which it ordered Ms. Burton disbarred. *Sullivan v. Monroe*, No. CV 000370545, 2001 Conn. Super. Lexis 3141 (Conn. Superior Ct., Nov. 2, 2001).

Ms. Burton thereafter appealed to the Connecticut Supreme Court, which heard the case en banc and, in a unanimous 59-page opinion, affirmed the order of disbarment on December 16, 2003. *Burton v. Mottolese*, 267 Conn. 1, 835 A.2d 998 (2003). On January 7, 2004, the Connecticut Supreme Court denied Ms. Burton's motion for reconsideration and this petition ensued.

B. The Petitioner's Misstatements

Rather than simply setting forth the facts that were found by the court below, Ms. Burton has liberally embellished her Statement of the Case with allegations that are not supported by the record and were rejected by the Connecticut Superior and Supreme Courts.

First, Ms. Burton implies that she took all necessary and appropriate steps to obtain authorization from the 22 *Sullivan* plaintiffs to initiate litigation in their names. In particular, Ms. Burton claims that (1) she was hired by the lead plaintiffs in the case, Lenore and Joseph Sullivan, to initiate a zoning appeal and "institute other legal actions as appropriate" (Pet. at 4); (2) she explained to the twenty-two plaintiffs at the organizational meeting on December 22, 1999, what a "plaintiff" was and what would be required of them as plaintiffs in the litigation (Pet. at 5); and (3) no written agreements were necessary with the plaintiffs other than the Sullivans because the Sullivans were assuming all

of the costs of the litigation (Pet. App. at 6). As the trial court found and the Connecticut Supreme Court affirmed, however, (1) the December 22nd meeting was limited to the zoning appeal and did not include discussion of "other legal actions" such as the declaratory judgment action that Ms. Burton filed; (2) Ms. Burton failed to explain the nature and scope of the proceeding adequately, such that many of the plaintiffs did not understand that they were agreeing to be plaintiffs in the litigation; and (3) Rule 1.5(b) of the Rules of Professional Conduct required Ms. Burton to enter into written retainer agreements with the plaintiffs regarding the scope of her representation and to explain to them, which she failed to do, that they could still be held individually liable for taxable costs even though the Sullivans were assuming the costs of the litigation. *Sullivan*, 2001 Conn. Super. Lexis 2000 at *10-12 (Conn. Superior Ct., July 17, 2001).

Second, Ms. Burton claims that Judge Mottolese harbored a bias against her from the outset of the case. In particular, she states that Judge Mottolese (1) was scornful of her reputation as an environmental lawyer (Pet. at 7); (2) falsely accused her of filing a judicial complaint against him years earlier (Pet. at 7); (3) prejudged the issues (Pet. at 14); (4) attempted to influence the plaintiffs' testimony (Pet. 13); and (5) limited the scope of her questioning. (Pet. at 13). All of these allegations, however, were specifically reviewed by the Connecticut Supreme Court and in each case, the Court found that the actual events that occurred did not reflect any actual bias towards Ms. Burton. (Pet.

App. at 32a – 40a). Accordingly, Ms. Burton's repeated assertions that Judge Mottolese was biased are not supported by the record.

Third, Ms. Burton states that her refusal to withdraw the Sullivans from the case as they had requested was motivated by her ethical obligation to protect the Sullivans from the risk of retaliatory action by the defendants. (Pet. at 26-27). The trial court found, however, that Ms. Burton had described the Sullivans as "confused," and that Ms. Burton's true motivation was concern that if the plaintiffs withdrew, she herself would be exposed to taxable costs, fees and other expenses. *Sullivan v. Monroe*, 2001 Conn. Super. Lexis 2000 at * 6-7 (Conn. Superior Ct., July 17, 2001); *see also* Pet. App. at 49a.

Finally, Ms. Burton claims that Judge Mottolese "*refused* to disclose to [her] the nature and scope of the proceedings" until December 21, 2000. (Pet. at 11; italics in original). This assertion is both misleading and patently incorrect. It is misleading because it suggests that the trial court was required to notify Ms. Burton of the charges against her prior to the completion of its initial inquiry on December 22, 2000. In fact, no such notice was required until prior to the commencement of the adjudicatory proceedings on January 4, 2001. *See In re Flanagan*, 240 Conn. 157, 174-175, 690 A.2d 865, *cert. denied*, 522 U.S. 865 (1997); Pet. App. at 25a-26a.[1] Furthermore, although

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[1] The Connecticut Supreme Court found that the trial court fully complied with this requirement by instructing Ms. Burton, at the close of its initial inquiry on December 22, 2000, that there were

notice was not required until January 4, 2001, the Connecticut Supreme Court found that Ms. Burton was in fact given notice of the nature of the proceedings from the moment that the defendants' counsel first raised questions about Ms. Burton's authorization to represent the plaintiffs in September, 2000. (Pet. App. at 26a-27a).

In particular, on September 28, 2000, the trial court issued an order notifying the parties, including Ms. Burton, that the hearing scheduled for October 31, 2000, would address, among other matters, "all motions for sanctions" and the "letter received by the court from Lenore and [Joseph] Sullivan" claiming that they had directed Ms. Burton to stop pursuing the litigation. (Pet. App. at 26a). One of the pending motions for sanctions was a motion by opposing counsel alleging that Ms. Burton had filed suit on behalf of certain plaintiffs without their consent and was pursuing the case against the plaintiffs' wishes.

When the October 31st hearing was rescheduled, the trial court issued an order on November 9, 2000, stating that the hearing on all motions for sanctions was rescheduled for November 27, 2000, and that, "if necessary, the court will adjudicate the status of each

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three issues that would be considered in the adjudicatory proceeding. These were "first, . . . [your] authority or lack of authority to represent the numerous plaintiffs other than the two Sullivans. Secondly, your continued activity in the case after being directed by the Sullivans to take no further action in the case. And third, the issue of your apparent divided loyalty between your duty to your client and your own self protection or aggrandizement." (Pet. App. at 25a).

plaintiff to ascertain if they are properly plaintiffs in this case on December 12, 2000." (Pet. App. at 6a, 26a).

At the November 27, 2000 hearing on the motions for sanctions, the trial court informed Ms. Burton that there were two issues in the case that it felt it had an obligation to address. The first was "whether [Ms. Burton] continued to participate in the litigation by filing pleadings and taking action without the consent of her clients" and the second was Ms. Burton's assertion of gender bias against the court. (Pet. App. at 7a).

When the parties reconvened on December 12, 2000, the trial court stated in Burton's presence that he had called the hearing in order to "get on the record what the facts are, or were with regard to [the plaintiffs'] status as plaintiffs in the case." Addressing the plaintiffs who had been subpoenaed to appear, again in Ms. Burton's presence, the court stated that:

> You are here because the Court determined at one of the prior proceedings that it was vital to the administration of justice that it determine whether you (a) initially authorized Attorney Burton to include your name as plaintiffs, [and] (b) . . . if you did whether at anytime you instructed [Attorney Burton] to withdraw your name from the litigation.

(Pet. App. at 26a). Thus, Ms. Burton's assertion that Judge Mottolese had refused to disclose the nature and scope of the proceedings to her until December 21, 2000, is patently incorrect.

REASONS FOR DENYING THE WRIT

The Connecticut Supreme Court's ruling affirming Ms. Burton's disbarment does not decide an important federal question in a way that conflicts with a decision of this Court, the United States Court of Appeals, or another state court of last resort. Nor does it decide an important question of federal law that has not been, but should be, settled by this Court. On the contrary, as discussed below, the ruling is simply an interpretation and application of state law principles involving attorney discipline that are entirely consistent with the rulings of this and other courts that have recognized the court's inherent authority, on its own motion, to initiate disciplinary proceedings against an attorney. Because, contrary to the petitioner's claims, there is absolutely no compelling reason whatsoever for this Court to review this matter, the petition for writ of certiorari should be denied.

I. THE CONNECTICUT SUPREME COURT'S CONCLUSION THAT THE TRIAL COURT HAD INHERENT AUTHORITY TO INITIATE A DISCIPLINARY PROCEEDING IS AN ISSUE OF STATE LAW THAT IS NOT PROPERLY SUBJECT TO THIS COURT'S REVIEW.

Ms. Burton claims that the trial court violated her right to procedural due process by not complying with the requirements of Connecticut Practice Book § 2-47, which, according to Ms. Burton, is the sole method under

Connecticut law for disbarring attorneys.[2] Because the Connecticut Supreme Court has determined that compliance with § 2-47 is not the sole method for disbarring attorneys, and this determination is a matter of state law, it is not properly subject to review by this Court. *International Longshoreman's Assn., AFL-CIO v. Davis*, 476 U.S. 380, 387 (1986); *Bush v. Gore*, 531 U.S. 98, 112 (2000)(Rehnquist, J., concurring).

Practice Book § 2-47 provides, in pertinent part, that (1) presentment of attorneys for misconduct to the superior court shall be made by written complaint of the statewide grievance committee or a reviewing committee; (2) a hearing on the merits shall be held within 60 days; (3) the attorney shall have the right to be heard in his or her own defense and by witnesses and counsel; and (4) the court shall render judgment by dismissing the complaint or

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[2] Connecticut Practice Book § 2-47(a) states that: "Presentment of attorneys for misconduct, whether or not the misconduct occurred in the actual presence of the court, shall be made by written complaint of the statewide grievance committee or a reviewing committee. Service of the complaint shall be made as in civil actions. Any interim proceedings to the contrary notwithstanding, a hearing on the merits of the complaint shall be held within sixty days of the date the complaint was filed with the court. At such hearing, the respondent shall have the right to be heard in his or her own defense and by witnesses and counsel. After such hearing the court shall render a judgment dismissing the complaint or imposing discipline as follows: reprimand, suspension for a period of time, disbarment or such other discipline as the court deems appropriate. This may include conditions to be fulfilled by the attorney before he or she may apply for readmission or reinstatement. Unless otherwise ordered by the court, such complaints shall be prosecuted by the disciplinary counsel or an attorney appointed pursuant to Section 2-48."

imposing such discipline as it deems appropriate, including reprimand, suspension or disbarment. Because the Superior Court fully complied with the second, third and fourth of these requirements,[3] Ms. Burton must be claiming that the trial court failed to comply with the first requirement by initiating an investigation sua sponte without a written complaint from the statewide grievance committee. In essence, Ms. Burton asserts that under Connecticut law a disciplinary proceeding can only be initiated by means of a formal written complaint presented to the trial court by the Statewide Grievance Committee pursuant to the procedures set forth Connecticut Practice Book § 2-47.

Ms. Burton made the same claim to the Connecticut Supreme Court, which rejected her argument and concluded, as a matter of state law, that the trial court's disciplinary authority is not limited to considering complaints from the Statewide Grievance Committee, but also includes the inherent authority to initiate its own investigations. Specifically, the Connecticut Supreme Court held that under Connecticut law "[t]he Superior Court possesses inherent authority to regulate attorney conduct and to discipline the members of the bar." *Burton*, 267 Conn. at 25, quoting *Massameno v. Statewide Grievance Committee*, 234 Conn. 539, 553, 663 A.2d 317 (1995); Pet. App. at 28a. This means that although Connecticut's

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[3] Within 60 days after notifying Ms. Burton of the charges against her, the trial court held a six day disciplinary hearing on the merits at which Ms. Burton testified, presented evidence and was given the option of being represented by counsel.

statutes and court rules establish and authorize a Statewide Grievance Committee to act as an arm of the court in fulfilling the court's responsibility to protect the public from unfit attorneys, "[s]uch statutes . . . are not restrictive of the inherent powers which reside in courts to inquire into the conduct of their own officers, and to discipline them for misconduct." *Burton*, 267 Conn. at 26, quoting *Doe v. Statewide Grievance Committee*, 240 Conn. 671, 678, 694 A.2d 1218 (1997); Pet. App. at 29a.

In support of this conclusion the Court cited *In re Peck*, 88 Conn. 447, 449, 91 A. 274 (1914), in which a disbarred attorney made the same argument that Ms. Burton is making, namely that disciplinary proceedings are improper unless a complaint has been presented to the court by the grievance committee as provided for by state statute and court rule. In rejecting this claim, the Connecticut Supreme Court explained that "the statute [creating the grievance committee] did not intend to provide an exclusive mode of instituting inquiries into the conduct of attorneys." *Id.* at 456. Instead:

> The courts are, as they should be, left free to act as may in each case seen best in this matter of most important concern to them and to the administration of justice. **They may of their own initiative, and without complaint, set on foot inquiries as to professional conduct and fitness**, or they may, in their discretion, entertain a complaint received from any source within or without the profession.

Id. at 457 (emphasis added).

The Connecticut Appellate Court addressed the same issue in *Grievance Committee v. Goldfarb*, 9 Conn. App. 464, 519 A.2d 624, *cert. denied*, 203 Conn. 802, 522 A.2d 292 (1987), and concluded that because the "rules of court do not provide exclusive methods for conducting attorney discipline proceedings in the Superior Court," the trial court is not restricted to hearing only those complaints referred to it by the grievance committee. *Id.* 9 Conn. App. at 474-475.

This conclusion is further supported by Practice Book § 2-45, which states in pertinent part that "without limiting the inherent powers of the court, if attorney misconduct occurs in the actual presence of the court, the statewide grievance committee and the grievance panels shall defer to the court if the court chooses to exercise its jurisdiction."

Citing *In re Peck*, *Grievance Committee v. Goldfarb*, and Practice Book § 2-45, the Connecticut Supreme Court held, as a matter of state law, that "a complaint before the statewide grievance committee is not the exclusive method of investigating attorney misconduct" and that "the trial court properly initiated disciplinary proceedings against [Ms. Burton]" on its own motion. *Burton*, 265 Conn. at 28.

This conclusion is entirely consistent with countless rulings of this Court, the lower federal courts, and the highest courts of other states, all of which have recognized the inherent authority of the courts to discipline attorneys. *See, e.g., In re Snyder*, 472 U.S. 634, 643 (1985)("[c]ourts

have long recognized an inherent authority to suspend or disbar lawyers"); *Ex Parte Wall*, 107 U.S. 265, 272 (1882)("a court has jurisdiction without any formal complaint or petition, upon its own motion, to strike the name of an attorney from the roll in a proper case"); *People of the Territory of Guam v. Palomo*, 35 F.3d 368, 376 (9th Cir. 1994)("[i]n addition to their statutory and Rules-based powers, district courts have the inherent power to sanction attorneys); *Kersey's Case*, 842 A.2d 121, 122 (N.H. 2004).

Moreover, and most importantly, the conclusion that the trial court has such authority, and that the procedure set forth in Connecticut Practice Book § 2-47 is not the exclusive method of initiating attorney disciplinary proceedings in Connecticut, is a determination of **state law**. As this Court has repeatedly recognized, this Court has "no authority to review state determinations of purely state law." *International Longshoremen's Assn. AFL-CIO v. Davis*, 476 U.S. 380, 387 (1986); *see also Mullaney v. Wilbur*, 421 U.S. 684, 691 (1975)("[t]his Court . . . repeatedly has held that state courts are the ultimate expositors of state law"); *Schad v. Arizona*, 501 U.S. 624, 636 (1991)("we are not free to substitute our own interpretations of state statutes for those of a State's courts"); *Bush v. Gore*, 531 U.S. 98, 112 (2000) (Rehnquist, J., concurring)("[i]n most cases, comity and respect for federalism compel [the Court] to defer to the decisions of state courts on issues of state law"); *see also Lander v. Hartford Life and Annuity Insurance Co.*, 251 F.3d 101, 119 (2d Cir. 2001)("we must defer to the

Connecticut Supreme Court on issues of state law"). This "practice reflects [this Court's] understanding that the decisions of state courts are definitive pronouncements of the will of the States as sovereigns." *Bush v. Gore*, 531 U.S. 98, 112 (2000) (Rehnquist, J., concurring). Accordingly, review by this Court would be both inappropriate and unwarranted.

II. THE TRIAL COURT'S DISCIPLINARY PROCEEDINGS WERE FAIR AND DID NOT VIOLATE DUE PROCESS.

Ms. Burton further alleges that the court's disciplinary proceedings were fundamentally unfair because (1) there was no clear and convincing evidence of attorney bad faith; (2) ambiguities in the Rules should have been resolved in her favor; (3) the trial court was biased; (4) the Connecticut Supreme Court impermissibly considered subsequent discipline; and (5) disbarment was draconian. None of these arguments has any merit or warrants review by this Court.

A. There Was Ample Evidence Of Bad Faith

According to Ms. Burton, when a district court exercises its inherent power to disbar an attorney it must make a specific finding that the attorney's conduct constituted or was tantamount to bad faith. (Pet. at 22). Ms. Burton fails to cite any authority applying this principle to the state courts, however, and neglects to point out that a finding of bad faith may be express or implied. *In re Sealed Appellant*, 194 F.3d 666, 671 (5th Cir. 1999);

Baldwin Hardware Corp. v. Franksu Enterprise Corp., 78 F.3d 550, 562 (Fed. Cir. 1996).

In the present case, the Connecticut Supreme Court affirmed the trial court's finding that Ms. Burton made misrepresentations to the court. (Pet. App. at 55a-57a). Caselaw cited by Ms. Burton establishes that this finding alone is sufficient to imply bad faith. *In re Sealed Appellant*, 194 F.3d 666, 671 (5th Cir. 1999)(a finding that an attorney has made misrepresentations to the court implies bad faith); *see also Baldwin Hardware Corp. v. Franksu Enterprise Corp.*, 78 F.3d 550, 562 (Fed. Cir. 1996). Ms. Burton not only made misrepresentations to the court, but also engaged in unauthorized representation, ignored conflicts of interest, leveled unsubstantiated allegations against the court, and performed below the acceptable level of competence for an attorney. Taken as a whole, these findings constituted ample grounds from which bad faith could be implied.[4]

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[4] The trial court also made an express finding of bad faith when, in the course of listing the aggravating factors that warranted an increased degree of discipline, it noted that Ms. Burton had engaged in a "bad faith attempt to obstruct the [disciplinary] action" of the trial court by filing a federal lawsuit against the trial judge. *Sullivan v. Monroe*, No. CV 000370545, 2001 Conn. Super. Lexis 3141 at *13 (Conn. Superior Ct., Nov. 2, 2001); Pet. App. at 63a.

B. The Interpretation Of Rule 1.5 Is A Matter Of State Law That Is Not Properly Subject To Review.

Ms. Burton further claims that Rule 1.5(b) of the Rules of Professional Conduct, which has been adopted by the Connecticut Superior Court and requires a written agreement between attorney and client regarding the scope of the attorney's representation and the costs of litigation, is ambiguous as to whether it applies to *pro bono* clients and therefore she should not have been disbarred for failing to enter into such an agreement with each of the plaintiffs.

Contrary to her claim, however, Ms. Burton was not disbarred for failing to enter into written agreements with each her clients. She was disbarred for a multitude of reasons, only one of which was her failure to enter into such agreements. Furthermore, the specific argument that Ms. Burton is making – that Rule 1.5 does not apply to *pro bono* clients – was not raised in the court below and is therefore not properly subject to review. *Heath v. Alabama*, 474 U.S. 82, 87 (1985). Moreover, although the Connecticut Supreme Court did not address the specific issue that Ms. Burton now raises, it did conclude that Ms. Burton was bound by, and violated, Rule 1.5(b) by not entering into written agreements with her clients concerning the scope of her representation. (Pet. App. at 42a-43a). This is a determination of state law that is not properly subject to review. *Schad v. Arizona*, 501 U.S. 624, 636 (1991); *Mullaney v. Wilbur*, 421 U.S. 684, 691 (1975).

C. Ms. Burton's Claim That The Trial Court Was Biased Was Fully Reviewed And Properly Rejected By The Connecticut Supreme Court.

Ms. Burton's further claim -- that the trial court was biased – was thoroughly reviewed and rejected by the Connecticut Supreme Court. *See* Pet. App. at 32a-40a.

In particular, as noted above, the Supreme Court rejected Ms. Burton's allegations that the trial court (1) was biased against her because of her reputation as an attorney who espoused environmental protection; (2) falsely accused her of filing a complaint against the court with the judicial review council; (3) prejudged the issues before the presentation of evidence; (4) influenced the plaintiffs' testimony; and (5) unduly restricted the scope of permissible questioning. (Pet. App. at 32a). As to each of these issues, the Connecticut Supreme Court, sitting *en banc*, conducted a "thorough review of the record" and unanimously concluded that the trial court's actions, when reviewed in context, did not reflect any actual bias toward Ms. Burton or raise a reasonable question concerning the court's impartiality. (Pet. App. at 32a-40a). Because there is no reason to question the Connecticut Supreme Court's analysis, further review of this issue by this Court is unwarranted.

D. The Supreme Court's Mention Of Ms. Burton's Subsequent Discipline Did Not Violate Due Process.

Ms. Burton further objects to the fact that the Connecticut Supreme Court, in affirming her disbarment,

noted not only her numerous prior reprimands and sanctions that were cited by the trial court, but also two additional disciplinary measures that had been imposed following the trial court's order and further evidenced Ms. Burton's pattern of ethical violations. *See* Pet. App. at 62a n. 51. Contrary to Ms. Burton's claim, reference to such discipline did not violate Ms. Burton's due process rights in any way.

In the first of the two cases, *Egri v. Connecticut Yankee Atomic Power Co.*, No. 3:02cv400(AHN)(D. Conn. July 8 and July 24, 2002), *aff'd, In re Egri*, 2003 U.S. App. Lexis 13409 (2d Cir. July 1, 2003), *cert. denied, Burton v. Connecticut Yankee Atomic Power Co.*, __ U.S. __, 124 S. Ct. 1419 (Feb. 23, 2004), District Court Judge Alan Nevas imposed a $171,546.80 sanction against Ms. Burton for violating a permanent injunction. The judgment is final and, to the respondent's knowledge, Ms. Burton has not paid the sanction.

In the second case, *Burton v. Statewide Grievance Committee*, 48 Conn. Supp. 94, 103, 830 A.2d 1205 (2002), *aff'd*, 79 Conn. App. 364, 365, 829 A.2d 927, *cert. denied*, 267 Conn. 903, 838 A.2d 209 (2003), Ms. Burton was reprimanded for intentionally and recklessly making false statements in violation of Rule 8.2(a) of the Rules of Professional Conduct. This reprimand, like the sanction discussed above, is also a final judgment.

The Connecticut Supreme Court cited these two cases in a footnote in the course of listing the ten aggravating factors that the trial court had identified as

justifying a heightened degree of discipline in Ms. Burton's case. Specifically, the Supreme Court noted that the trial court had found that Ms. Burton (1) had been disciplined several times prior to these proceedings; (2) acted out of selfish and dishonest motives; (3) engaged in a pattern of misconduct; (4) committed multiple offenses; (5) engaged in a bad faith attempt to obstruct the disciplinary proceedings by filing a federal action against the trial court; (6) submitted false statements to the court during the disciplinary proceeding; (7) refused to acknowledge the wrongful nature of her misconduct; (8) engaged in misconduct against the civil justice system; (9) acquired experience in the field of litigation; and (10) was indifferent to making restitution. (Pet. App. at 62a-65a). With regard to the first aggravating factor – the fact that Ms. Burton had been disciplined previously – the trial court cited nine examples. (Pet. App. at 62a n. 51). The fact that the Connecticut Supreme Court, in listing the nine examples of prior discipline, noted, in a footnote, two more examples of misconduct that had occurred subsequent to the trial court's order in no way violated Ms. Burton's due process rights. The nine prior disciplinary actions were merely one of the ten aggravating factors in Ms. Burton's case and the Court did not suggest, and there is no basis for concluding, that the two subsequent actions were in any way determinative of its ruling. At most, the fact that the Court mentioned the new cases constituted an implied observation that the "pattern of pervasive misconduct" identified by the trial court was ongoing.

E. Disbarment Was Warranted

Ms. Burton's final claim is that disbarment was draconian. There is no question that disbarment is an extremely serious sanction. However, "[a] court disciplining an attorney does so not to punish the attorney, but rather to safeguard the administration of justice and to protect the public from the misconduct or unfitness of those who are members of the legal profession." *Thalheim v. Greenwich*, 256 Conn. 628, 655, 775 A.2d 947 (2001). Thus, "[a] court is free to determine in each case, as may seem best in light of the entire record before it, whether a sanction is appropriate and, if so, what the sanction should be." *Thalheim*, 256 Conn. at 656.

In the present case, the trial court was guided by the American Bar Association's Standards for Imposing Lawyer Sanctions and, in compliance with those Standards, appropriately considered the nature of the duty violated, the attorney's mental state, the potential or actual injury stemming from the attorney's misconduct, and the existence of aggravating or mitigating factors. Weighing all of these considerations, the trial court concluded that:

> The evidence in this case reveals a pattern of pervasive misconduct in so many facets of the practice of law that Attorney Burton's very fitness to practice law has been called into question. It is incomprehensible to the court that after twenty five years of practice Attorney Burton fails to demonstrate a proper understanding of the professional standards imposed on members of the bar. What elevates the seriousness of her

> behavior to a critical level is the fact that not only have rules of professional conduct been violated, but much of her professional misconduct has been directed toward the administration of justice. Courts cannot function if trial attorneys believe that they have the right to deny their authority when it is opportune for them to do so. Equally, the judicial institution will lose its public credibility if attorneys choose to assault the integrity of the process and the individuals who are charged with making the decisions which are essential to its vitality.

Sullivan v. Monroe, No. CV 000370545, 2001 Conn. Super. Lexis 3141 at *18-19 (Conn. Superior Ct., Nov. 2, 2001). The Connecticut Supreme Court found no abuse of discretion in this conclusion (Pet. App. at 65a) and there is no basis for this Court to conclude otherwise.

CONCLUSION

For all of the reasons set forth herein, the petitioner's petition for a writ of certiorari should be denied.

Respectfully submitted,

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